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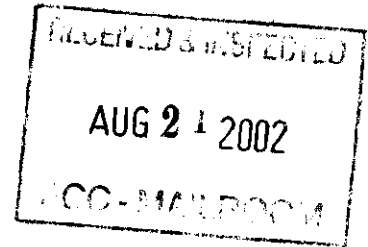
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Yeshiva Chasdei Torah)
Brooklyn, New York)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-263339

CC Docket No. 96-45

CC Docket No. 97-21 ✓

**ORDER****Adopted: August 14, 2002****Released: August 15, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by Yeshiva Chasdei Torah (Yeshiva), Brooklyn, New York.¹ Yeshiva requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying some of Yeshiva's Funding Year 2001 requests for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing

¹ Letter from Aaron Katz, Yeshiva Chasdei Torah, to Federal Communications Commission, filed April 3, 2002 (Request for Review).

² *Id.* Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470.⁴ The FCC Form 470 is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Item 25 of the FCC Form 471 required applicants to certify that they had secured access "to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services."⁷ In the *United Talmudical Academy Order*, the Commission affirmed SLD's practice of reviewing the accuracy of applicants' certifications regarding necessary resources, concluding that by so doing, SLD ensures compliance with statutory requirements and Commission rules and curbs waste, fraud, and abuse in the schools and libraries universal service mechanism.⁸

4. Yeshiva filed a Funding Year 2001 application on January 12, 2001.⁹ On October 11, 2001, SLD faxed Yeshiva a request for further documentation, including documentation of their ability to pay their share of service costs.¹⁰ SLD specifically requested copies of all contracts related to the application, a copy of all requests for proposal, copies of bids received, documentation of how service providers were selected, and pages of Yeshiva's operating budget documenting Yeshiva's ability to pay its share of the requested services.¹¹ If a budget was not

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ See FCC Form 471 at Item 25.

⁸ *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 423 (2000) (*United Talmudical Academy Order*).

⁹ FCC Form 471, Yeshiva Chasdei Torah, filed January 12, 2001 (Yeshiva Form 471).

¹⁰ Facsimile from Pina Portanova, Schools and Libraries Division, Universal Service Administrative Company, to Aaron Katz, Yeshiva Chasdei Torah, dated October 11, 2001 (SLD Request), at 2.

¹¹ *Id.*

available, SLD indicated that it would accept, as evidence of ability to pay, either a draft budget, a resolution of a governing Board authorizing the application for the given amount, or, if donations were the source of funds, a signed commitment from the donor.¹² If these alternate means were used, however, SLD specified that a letter signed by a school or library official, such as the board president, must accompany the document, explaining, among other things, what phase of budget approval the applicant had reached and whether funding was contingent on outside action.¹³

5. In its response, Yeshiva asserted that its accountant's office was in the World Trade Center and that the school's contracts, and other data were lost on September 11, 2001.¹⁴ To demonstrate ability to pay, it submitted a letter from the school board president, addressed to "to whom it may concern," stating that the board of directors had budgeted \$21,000 to pay for the school's share of services.¹⁵

6. On November 26, 2001, SLD faxed a follow up request, stating that "we have determined that we require additional information to continue our review" and requesting the information by the close of business, December 3, 2001.¹⁶ Specifically, it requested "all signed and dated contracts with Smart Telecom [Yeshiva's service provider] and an operating budget. SLD again indicated that if a budget was not available, SLD would need one of three alternative forms of documentation accompanied by a letter signed by a school official."¹⁷

7. Yeshiva did not respond to this faxed request. SLD then called Yeshiva on two occasions, December 4 and 10, 2001, leaving messages, and again received no response.¹⁸ SLD then called a third time on December 11, 2001, but found that the contact person phone number was no longer in service.¹⁹

8. On February 8, 2001, SLD issued a Funding Commitment Decision Letter denying all of Yeshiva's requests on the grounds that "[y]ou did not demonstrate that you had

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ Letter from Aaron Katz, Yeshiva Chasdei Torah, to Pina Portanova, Schools and Libraries Division, Universal Service Administrative Company (no date legible) (Yeshiva Response to Request).

¹⁵ *Id.*, attachment.

¹⁶ Facsimile from Michael Deusinger, Schools and Libraries Division, Universal Service Administrative Company, to Aaron Katz, Yeshiva Chasdei Torah, dated November 26, 2001 (Follow-up Request).

¹⁷ *Id.*

¹⁸ Universal Service Administrative Company, Schools and Libraries Division, Application Activity, Yeshiva Chasdei Torah, June 4, 2002 (indicating message left for Aaron Katz on December 4, 2001 and December 10, 2001).

¹⁹ *Id.*

secured access to the funds necessary to pay the non-discount charges at the time you submitted your application.”²⁰ Yeshiva then filed the pending Request for Review.

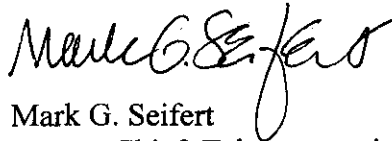
9. In its Request for Review, Yeshiva references the letter that it sent to SLD, affirming its ability to pay its share.²¹ However, Yeshiva does not offer any excuse for its failure to answer any of SLD’s three follow-up contacts. Further, we find that Yeshiva’s memo from the board president was not responsive to SLD’s request for documentation of ability to pay, as was made clear in both SLD’s initial and follow-up requests, which specified the need for a resolution of the full board in addition to the president’s letter.²²

10. The destruction of Yeshiva’s budget and contracts on September 11, 2001, warranted flexibility in the pursuit of the documentation requests, but did not excuse Yeshiva’s failure to make any response to SLD’s multiple requests for follow-up information. In addition, even if Yeshiva’s budget and contracts were unavailable, Yeshiva could still have submitted one of the alternative means of documenting its ability to pay, and obtained copies of its service contracts from Smart Telecom, its service provider.

11. Because Yeshiva did not comply with or even respond to SLD’s follow-up documentation requests, we deny the Request for Review.

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Yeshiva Chasdei Torah, Brooklyn, New York, on April 3, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireless Competition Bureau

²⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Aaron Katz, Yeshiva Chasdei Torah, dated February 8, 2002 (Funding Commitment Decision Letter), at 6-7.

²¹ Request for Review at 1.

²² SLD Request; Follow-up Request.